

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

v.

MANUEL HARA,

Defendant.

Case No. 2:04-cr-00220-KJD-PAL-2

**ORDER – Denying Motion for Sentence  
Reduction**

Presently before the Court is Defendant’s pro se Motion for Sentence Reduction Pursuant to 18 U.S.C. 3582(c) (#179). The FPD’s office filed a notice of non-eligibility. (#182). For the reasons stated below, Defendant’s motion is denied.

**I. Factual and Procedural Background**

On December 9, 2005, a jury found Manuel Hara (“Hara” or “Defendant”) guilty of conspiracy to distribute methamphetamine, in violation of 21 U.S.C. § 846 and § 841(a)(1), attempted possession with intent to distribute methamphetamine, in violation of 21 U.S.C. § 841(a)(1), and unlawful possession of a firearm, in violation of 18 U.S.C. § 922(g)(5)(A) and § 924(a)(2). On March 3, 2006, this Court sentenced Hara to three hundred and sixty (360) months imprisonment, followed by sixty (60) months of supervised release. (#129). Hara appealed his conviction on March 13, 2006 (#132), and the Ninth Circuit affirmed his conviction on June 21, 2007. (#155).

Previously, Hara filed a motion for a sentence reduction, arguing that he was eligible for a reduced sentence under Amendment 782. (#166). The Court denied Hara’s motion because his base offense level remained unchanged under the amended sentencing guidelines. (#170). Defendant now brings this second motion and argues that “‘extraordinary and compelling reasons’ support his release within the meaning of 18 U.S.C. 3582(c)(1)(A) because . . . changes to his statute of conviction mean that he would likely receive a shorter sentence if sentenced today.” (#179, at 2).

1       II.     Legal Standard

2           A judgment of conviction that includes a sentence of imprisonment constitutes a final  
3 judgment and may not be modified by a district court except in limited circumstances. 18 U.S.C.  
4 § 3582(b). 18 U.S.C. § 3582(c)(1)(A), as amended by the First Step Act of 2018, allows certain  
5 inmates to seek a modification of their imposed term of imprisonment. Specifically, §  
6 3582(c)(1)(A) provides, in relevant part:

7                     [T]he court, upon motion of the Director of the Bureau of Prisons, or upon  
8 motion of the defendant after the defendant has fully exhausted all administrative  
9 rights to appeal a failure of the Bureau of Prisons to bring a motion on the  
10 defendant's behalf or the lapse of 30 days from the receipt of such a request by the  
11 warden of the defendant's facility, whichever is earlier, may reduce the term of  
12 imprisonment (and may impose a term of probation or supervised release with or  
13 without conditions that does not exceed the unserved portion of the original term  
14 of imprisonment), after considering the factors set forth in section 3553(a) to the  
15 extent that they are applicable, if it finds that . . . extraordinary and compelling  
16 reasons warrant such a reduction . . . and that such a reduction is consistent with  
17 applicable policy statements issued by the Sentencing Commission[.]

18 U. 3582(c)(1)(A), (c)(1)(A)(i).

19           If the defendant has exhausted administrative remedies, the analysis is twofold. First, the  
20 Court must find “extraordinary and compelling reasons” warranting such a reduction and that  
21 such a reduction is consistent with policy statements issued by the Sentencing Commission. 18  
22 U.S.C. § 3582(c)(1)(A). Second, the Court must consider the same factors applicable at the  
23 original sentencing, enumerated in 18 U.S.C. § 3553(a), to the extent they remain applicable at  
24 the time the motion is brought. Id. As the movant, the defendant bears the burden to establish  
25 that he is eligible for a sentence reduction. See United States v. Wright, 46 F.4th 938, 951 (9th  
26 Cir. 2022) (explaining it is the “[defendant’s] burden to establish his eligibility for  
27 compassionate release”).

28           Under U.S.S.G. § 1B1.13(b), extraordinary and compelling reasons exist under any of the  
following circumstances or combination thereof: (1) medical circumstances of the defendant; (2)  
age of the defendant; (3) family circumstances of the defendant; (4) victim of abuse; (5) other  
reasons; and (6) unusually long sentence. U.S.S.G. § 1B1.13(b)(1)-(6). The Court begins by  
examining whether an extraordinary and compelling reason exists to warrant a reduction in

1 Hara's sentence.

2 III. Analysis

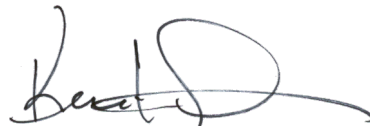
3 Liberally construed, Defendant's motion attempts to argue that he received an unusually long  
4 sentence' thus, an extraordinary and compelling reason exists to warrant a reduction in sentence.  
5 (#179, at 2). Specifically, Hara argues that "changes to his statute of conviction mean that he  
6 would likely receive a shorter sentence if sentenced today." Id. The Court disagrees.

7 At the time of sentencing, Hara's calculated base offense level was 38 for possessing 8.771  
8 kg of actual methamphetamine, with an additional two points added for possessing three  
9 firearms, resulting in a total offense level of 40. (PSR, at 8). With a criminal history score of  
10 nine, the guideline range of imprisonment was 360 months to life. Id. at 18. If sentenced today,  
11 Hara would still have a base offense level of 38 for possessing "4.5 KG or more of  
12 Methamphetamine (actual)." See U.S.S.G. § 2D1.1(a)(5), (c) (Nov. 2023); (PSR, at 8). When  
13 adding the two additional points for possessing three firearms, Hara's resulting total offense level  
14 would remain at 40. The only difference today is that under Part A of Amendment 821, Hara  
15 would receive one status point instead of two, thus lowering his total criminal history points to  
16 eight. However, even with eight criminal history points, Hara would still be placed in criminal  
17 history category IV. As such, Hara would still have a guideline range of 360 months to life, and  
18 there would be no gross sentencing disparity.

19 IV. Conclusion

20 Accordingly, **IT IS HEREBY ORDERED** that Defendant's Motion for Sentence Reduction  
21 Pursuant to 18 U.S.C. 3582(c) (#179) is **DENIED**.

22  
23  
24 Dated this 9<sup>th</sup> day of May 2024.



25  
26 Kent J. Dawson  
27 United States District Judge  
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